IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2007

CORAM

THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.1391 OF 2007

The Commissioner of Income Tax,
Madurai. Appellant

v.

M/s.Sree Kaderi Ambal Mills Ltd.,
Super B-3 Industrial Estate,
Madurai 625 007. Respondent

Appeal preferred under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, D Bench, Chennai dated 08.06.2007 made in I.T.A. No.1364/Mds/2001 for the assessment year 1997-98 as against the Commissioner of Income Tax (Appeals) I, Madurai dated 9.8.2001 made in P.A.NO.49-001-CN 0065 in I.T.A.No.103/2000-2001 for the assessment year 1997-1998 and as against the Joint Commissioner of Income Tax, Spl. Range II, Madurai order dated 24.3.2000 made in P.A.No.49-001-CN-0065 for the assessment year 1997-1998.

For Appellant : Mr.J.Naresh Kumar
Standing Counsel for IT

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JUDGMENT

(Judgment of the Court was delivered
by K.RAVIRAJA PANDIAN, J.)

The appeal is filed by the revenue against the order of the Income-tax Appellate Tribunal 'D' Bench, Chennai dated 08.06.2007 made in I.T.A. No.1364/Mds/2004 for the assessment year 1997-98.

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2. The material facts, as culled out from the statement of facts appended to the memorandum of grounds, are as follows :

The assessee filed its return of income for the assessment year 1997-98 returning an income of Rs.50,67,310/-. The assessee, inter alia, claimed the commission paid for opening of the letter of credit for the purpose of import of machinery to the tune of Rs.1,30,922/- as revenue expenditure. The assessing officer treated the purchase of machinery as capital expenditure and accordingly treated the commission paid for opening of letter of credit as capital expenditure and brought the same to tax. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) held that the replacement of machinery has already been held as revenue expenditure and accordingly the LC commission paid on such purchase of machinery should only be treated as revenue expenditure and thus decided the issue in favour of the assessee.

3. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue took up the matter before the Income Tax Appellate Tribunal. The Tribunal, by its consolidated order dated 23.06.2005 made in I.T.A. No.467/Mds/00, I.T.A. No.1364/Mds/2001 and I.T.A. No.106/Mds/2002, held that the issue of replacement of machinery is a revenue expenditure, however, did not adjudicate the issue as to the commission paid for opening of letter of credit. Therefore, the revenue filed a miscellaneous petition before the Income Tax Appellate Tribunal in M.P. No.201/Mds/2001. The Tribunal, by its order dated 11.07.2007, recalled the earlier order dated 23.06.2005 in respect of ITA No.1364/Mds/2001 to consider the issue and by the impugned order dated 08.06.2007 held that even if the expenditure on account of claim of commission is held to be in the nature of capital expenditure, the same has to be allowed as revenue expenditure on account of replacement of machinery, in view of the decision of this Court in the case of CIT v. Janakiram Mills Ltd., (2005) 275 ITR 403 and confirmed the order of the Commissioner of Income Tax (Appeals). The correctness of the said order is put in issue before this Court by framing the following substantial question of law :

> "Whether on the facts and in circumstances of the case, the Tribunal was right in allowing the L.C. commission as revenue expenditure, when the same is being paid towards purchase of the machineries, which has been capitalized?"

4. We heard the learned counsel on either side and perused the materials available on record.

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5. The Tribunal primarily based on the decision of this Court in CIT v. Janakiram Mills Ltd., (2005) 275 ITR 403 has held that the commission paid to the Banks for opening of letter of credit is revenue expenditure.

6. The Supreme Court in the case of CIT v. Ramaraju Surgical Cotton Mills, (2007) 294 ITR 328 set aside the decision of the Madras High Court in the case of CIT v. Janakiram Mills Ltd., (2005) 275 ITR 403 without expressing any opinion on merits as to whether the expenditure incurred in replacement of the assets without increasing the production capacity would amount to revenue expenditure, on the ground that there was no material available on record to support the contention that the replacement of asset was without increasing the production capacity or expenditure for replacing the old machinery by new machinery, which constitutes an advantage of enduring nature and therefore the expenditure was capital in nature. The Supreme Court in the case of CIT v. Saravana Spinning Mills P. Ltd., (2007) 293 ITR 201 held that under section 31(i) of the Income Tax Act, 1961, the deduction admissible was only for the current repairs. The question as to whether the expenditure incurred by the assessee conceptually is a revenue or capital in nature was not relevant for deciding the question whether the expenditure comes within the etymological meaning of the expression 'current repairs', and the Supreme Court held that if the expenditure was revenue in nature, it cannot fall within the connotation of 'current repairs'. Hence, none of the cases referred by the lower authorities advances the case of either of the parties.

7. Here, in this case, for the purpose of importation of machinery for replacing the old worn out machinery, the assessee has paid commission to the bankers for opening of letter of credit. The machinery so imported might be for replacing the old machinery which was found to be defective, but that would not be germane to decide the issue in the appeal. Letter of credit has been opened for secured performance of the contract for payment of sale consideration of the machinery. As and when the machinery is imported or cleared, letter of credit issued by the banks would be negotiated by the seller and realise the sale consideration through the Bank. In order to perform this service of opening a letter of credit, the banker charged certain amount by way of commission and that has been paid. The payment so made as commission for opening of the letter of credit cannot be regarded as sale price of the machinery, so as to treat it as a capital expenditure, as it has no relation to the capital or capital goods of the assessee and it could be regarded only as a revenue expenditure. Though the reason stated by the Tribunal was somewhat different, the ultimate conclusion that the commission paid for the opening of the letter of credit could be regarded as revenue expenditure is correct. We do

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not find any ground to interfere with the conclusion arrived at by the Tribunal. The appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

krr/mf

To

1. The Assistant Registrar
Income Tax Appellate Tribunal,
Bench C, Rajaji Bhavan, III Floor,
Besant Nagar, Chennai-90.

2. The Income Tax Appellate Tribunal
Bench D, Chennai.

3. The Commissioner of Income Tax (Appeals)I
Madurai- 625 002.

4. The Joint Commissioner of Income Tax,
Special Range II, Madurai.

1 cc to Mrs. Pushya Sitaraman, Advocate, Sr. 67928

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